

1
2
3 UNITED STATES DISTRICT COURT
4 FOR THE EASTERN DISTRICT OF CALIFORNIA
5

6 JOE HAND PROMOTIONS,

7 Plaintiff,

8 v.

9 STEVEN MELENDEZ GONZALEZ, et al.,
10

11 Defendants.

1:10-cv-00134 OWW DLB

MEMORANDUM DECISION
PERMITTING SUPPLEMENTAL
BRIEFING RE MOTION FOR
APPOINTMENT OF RECEIVER (DOC.
21)

12
13 Plaintiff, Joe Hand Promotions, obtained default judgment
14 against Defendants, Seven Melendez Gonzales and Wendy M. Raygoza,
15 d/b/a Fattie Albert's Pizza Co., in the amount of \$20,800.00 for
16 violations of various telecommunications statutes, namely 47
17 U.S.C. §§ 553, 605, and for conversion of plaintiff's property.
18 Doc. 16. Judgment was entered September 30, 2010. *Id.* The
19 complete balance of the judgment remains unpaid. Plaintiff now
20 seeks to enforce the judgment under the laws of California
21 pursuant to Federal Rule of Civil Procedure 69(a). Doc. 21.
22

23 The violations and conversion occurred in the operation of a
24 business known as Fattie Albert's Pizza Co., a/k/a Fatte Alberts
25 Pizza Company, located in Hanford, California. Defendant is the
26 owner of a liquor license bearing number 443997. Declaration of
27 David J. Cook, Doc. 21-3, ¶5. Plaintiff seeks the appointment of
28

1 a receiver to take possession of and sell the liquor license.
2 Doc. 21.

3 Federal Rule of Civil Procedure 66 provides for the
4 appointment of receivers:

5 These rules govern an action in which the appointment
6 of a receiver is sought or a receiver sues or is sued.
7 But the practice in administering an estate by a
8 receiver or a similar court-appointed officer must
9 accord with the historical practice in federal courts
or with a local rule. An action in which a receiver has
been appointed may be dismissed only by court order.

10 A recent Northern District of California decision addressed the
11 application of Rule 66 vis-a-vis state law in a similar
12 circumstance:

13 ... Rule 66 does not provide the specifics for
14 appointing a receiver to sell a liquor license in
15 satisfaction of a money judgment. *See Office Depot Inc.*
16 *v. Zuccarini*, 596 F.3d 696, 701 (9th Cir. 2010) (Rule
17 66 does not specify proper location for appointment of
18 a receiver; therefore, state law governs this issue).
19 Because no federal statute applies to the appointment
20 of a receiver for the sale of a liquor license, Rule
69(a) dictates that state law is followed in this
instance. *See In re Levander*, 180 F.3d 1114, 1121 (9th
Cir. 1999) (Rule 69(a) allows judgment-creditors to use
state law to collect on their debts).

21 *J & J Sports Productions, Inc. v. Huezco*, 2011 WL 1134265, 1 (N.D.
22 Cal. 2011).

23 Under California law, Plaintiff is entitled to levy its
24 judgment upon the property of defendant pursuant to Cal. Code
25 Civ. Pro. § 669.710, which provides:

26 Except as otherwise provided by law, all property that
27 is subject to enforcement of a money judgment pursuant
28 to Article 1 (commencing with Section 695.010) of
Chapter 1 is subject to levy under a writ of execution

1 to satisfy a money judgment.

2 With some exceptions, "all property of the judgment debtor is
3 subject to enforcement of a money judgment." Cal. Code Civ. Pro.
4 § 695.010(a).

5 Cal. Code Civ. Pro. § 708.630 specifically permits the
6 application of a liquor license to the satisfaction of a money
7 judgment. This statute, which is not discussed in Plaintiff's
8 brief, also provides for the appointment of a receiver:
9

10 (a) The judgment debtor's interest in an alcoholic
11 beverage license may be applied to the satisfaction of
a money judgment only as provided in this section.

12 (b) The court may appoint a receiver for the purpose of
13 transferring the judgment debtor's interest in an
alcoholic beverage license that is transferable under
14 Article 5 (commencing with Section 24070) of Chapter 6
of Division 9 of the Business and Professions Code,
15 unless the judgment debtor shows in the proceeding to
appoint a receiver that the amount of delinquent taxes
described in Section 24049 of the Business and
16 Professions Code and claims of creditors with priority
over the judgment creditor pursuant to Section 24074 of
17 the Business and Professions Code exceed the probable
sale price of the license.

18 (c) The receiver may exercise the powers of the
19 licensee as necessary and in exercising such powers
shall comply with the applicable provisions of Division
20 9 (commencing with Section 23000) of the Business and
Professions Code and applicable regulations of the
21 Department of Alcoholic Beverage Control. An
application shall be filed to transfer the license to
22 the receiver and a temporary retail permit shall be
obtained during the pendency of the transfer.

23 The legislative comment to § 708.630 "indicates that, because
24 alcoholic beverage licenses are not subject to levy under a writ
25 of execution and because the Alcoholic Beverage Control Act,
26 California Business and Professions Code §§ 23000 *et seq.*,
27 provides detailed procedures for the sale of alcoholic beverage
28

1 licenses, use of a receiver is appropriate for the sale of such a
2 license to satisfy a money judgment." *J&J Sports v. Huevo*, 2011
3 WL 1134265, *2.

4 Before appointing a receiver under section 708.630, a court
5 must ensure that "the amount of delinquent taxes described in
6 Section 24049 of the Business and Professions Code and claims of
7 creditors with priority over the judgment creditor pursuant to
8 Section 24074 of the Business and Professions Code" do not
9 "exceed the probable sale price of the license." As this is an
10 action in default, Plaintiff must establish (a) the value of the
11 liquor license through an appraisal; (b) that any tax delinquency
12 or claims of creditors do not exceed the value of the license.

13
14 More generally, Cal. Code Civ. Pro § 708.620, which governs
15 the circumstances in which a receiver may be appointed, provides:
16

17 The court may appoint a receiver to enforce the
18 judgment where the judgment creditor shows that,
19 considering the interests of both the judgment creditor
20 and the judgment debtor, the appointment of a receiver
21 is a reasonable method to obtain the fair and orderly
22 satisfaction of the judgment.

23 Here, Plaintiff claims to have sent post-judgment discovery
24 to Defendant in an attempt to locate Defendant's assets and
25 maintains that these discovery demands and interrogatories have
26 been ignored. Plaintiff also claims to have attempted to contact
27 Defendant on many occasions. However, Plaintiff offers no
28 evidentiary support for these assertions. Plaintiff must
supplement its motion with evidence to support a good cause

1 showing.

2

3

CONCLUSION

4

5

6

7

8

9

SO ORDERED

10

Dated: June 13, 2011

11

Oliver W. Wanger

12

United States District Judge

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28